

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MAZEN F. SAID,	:	CIVIL ACTION NO. 1:CV-07-1028
	:	
Plaintiff	:	(Judge Rambo)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
JANINE DONATE, et al.,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

Plaintiff, an inmate at the Lackawanna County Prison, Scranton, Pennsylvania, filed this action pursuant to 42 U.S.C. § 1983 on June 5, 2007. Plaintiff is proceeding *pro se*.

After conducting the initial screening mandated by the Prison Litigation Reform Act of 1995,¹ the undersigned issued a Report and Recommendation on June 29, 2007, recommending that Plaintiff's First Amendment and Eighth Amendment claims against all Defendants be dismissed, and that his Motion for Summary Judgment be denied. (Doc. 8). On July 30, 2007, the District Court issued an Order adopting in part and rejecting in part the Report and Recommendation, and remanding the matter to the undersigned. (Doc. 10). Specifically, the District Court dismissed Plaintiff's Eighth Amendment claims as we recommended, but rejected our recommendation that Plaintiff's First Amendment claim be dismissed. The District Court also granted Plaintiff leave to file an amended complaint no later than August 20, 2007. The Order further stated that Plaintiff's "failure to file a timely amended complaint will result in the dismissal of the complaint in its entirety." (Doc. 10, p. 2, ¶ 4).

¹Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996).

The time in which Plaintiff was to have filed his amended complaint has expired. The Plaintiff has neither filed his amended complaint nor requested an extension of time in which to do so.

Federal Rule of Civil Procedure 41(b) allows for the dismissal of an action for "failure of the plaintiff to prosecute or comply with these rules or *order of court*, . . ." (emphasis added). In the instant case, Plaintiff has failed to both prosecute his action and to comply with an Order of the Court by his failure to file an amended complaint as directed. Plaintiff is deemed as abandoning his action. See *McCray v. Dauphin Co. Prison*, 2007 WL 431886 (M.D. Pa); *Nelson v. Berbanier*, 2006 WL 2853968 (M.D. Pa.). Moreover, the District Court has previously ordered that Plaintiff's action would be dismissed if he failed to file his amended complaint by August 20, 2007.

Based on the foregoing, it is respectfully recommended that this action be dismissed on the basis of Plaintiff's failure to timely file an amended complaint and for failure to comply with the July 30, 2007 Order of the District Court.

**s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge**

Dated: September 5, 2007

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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated **September 5, 2007**.

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: September 5, 2007